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Utah Supreme Court

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Richard I. Ashton; Attorneys for Appellant;

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IN THE SUPREME COURT
OF THE STATE OF UTAH

STATE OF UTAH, by and
through Utah State Department
of Social Services,

Plaintiff & Respondent,

v.

Case No. 18161

D. JOHN MUSSELMAN and
LINDA ANN CORAM,

Defendants & Appellant.

BRIEF OF APPELLANT

Appeal from the Judgment of
the Third District Court for Salt Lake County
Honorable G. Hal Taylor, Judge

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FILED

MAR - 5 1982

Clerk, Supreme Court, Utah

IN THE SUPREME COURT
OF THE STATE OF UTAH

STATE OF UTAH, by and	:	
through Utah State Department	:	
of Social Services,	:	
	:	
Plaintiff & Respondent,	:	
	:	
v.	:	Case No. 18161
	:	
D. JOHN MUSSELMAN and	:	
LINDA ANN CORAM,	:	
	:	
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BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

This is an appeal from the denial by the lower court of Defendant's Motion to Set Aside Default and Default Judgment in the Third Judicial District Court, in and for Salt Lake County, State of Utah, the Honorable G. Hal Taylor presiding.

DISPOSITION IN THE LOWER COURT

The Court below entered its order denying the Defendant's Motion to Set Aside Default and Default Judgment.

RELIEF SOUGHT ON APPEAL

Appellant seeks a reversal as a matter of law of the denial of the Defendant's Motion to Set Aside Default and Default Judgment and a remand to the lower court for a trial on the merits.

STATEMENT OF THE FACTS

Between April 8, 1977 and May 23, 1978, Linda Ann Coram received various medical treatments and supplies and incurred expenses therefor in the alleged amount of \$82,522.22, which sums were paid on her behalf by the State of Utah pursuant to Section 55-15a-3, Utah Code Annotated 1953, as amended. In 1978, Mrs. Coram engaged the services of an attorney, D. John Musselman, to represent her in prosecuting a medical malpractice claim against a medical doctor, claiming professional negligence on the part of said doctor and praying

for money damages. During February 1981, Linda Ann Coram's case was settled with the insurance carrier for the doctor in the sum of \$150,000.00. The State of Utah claims the right to recover in subrogation for the amount expended on behalf of Mrs. Coram.

On June 4, 1981, the Plaintiff/Respondent, State of Utah, caused to be served upon the Defendant/Appellant, D. John Musselman a summons and complaint (Record pp. 2-7) praying for judgment in the amount of \$82,522.22 under two separate causes of action. Between June 4, 1981 and June 26, 1981, there were telephone conversations between the Defendant/Appellant and Mr. Leon A. Halgren of the Utah State Attorney General's office with regard to a possible settlement of the State's alleged claim through conciliation and compromise. In the latter part of June 1981, the Defendant/Appellant became suddenly and seriously ill and was admitted on an emergency basis as an inpatient at the Utah Valley Hospital in Provo, Utah under an initial diagnosis of gastro intestinal bleeding. See Appendix A. After approximately one week of diagnostic testing in the hospital, the Defendant/Appellant was released from the Utah Valley Hospital as an inpatient on or about July 4, 1981 but continued under the care and treatment of Kirk R. Anderson, M.D. The Defendant/Appellant was not able to return to work at his office until approximately two weeks after release from the

hospital. See Appendix B. During the week preceding July 14, 1981, the Defendant/Appellant, although still unable to return to work and resume his duties, attempted to contact Leon A. Halgren but was unable to reach Mr. Halgren. The purpose for the attempted contacts was to advise the Plaintiff/Respondent of the sudden illness of the Defendant/Appellant and to obtain sufficient additional time to answer the Plaintiff/Respondent's complaint. On or about July 14, 1981, during the afternoon hours, the Defendant/Appellant did reach Mr. Halgren and was informed that Default had been entered on July 9, 1981 and judgment had been taken earlier that same day, the 14th of July 1981. (Record pp. 8-9).

On or about August 13, 1981, the Defendant/Appellant caused to be filed his Motion to Set Aside Judgment (Record p. 32) supported by his tendered answer to the complaint of the Plaintiff/Respondent (Record pp. 29-31), his Affidavit (Record pp. 26-28), and his Notice of Motion declaring August the 18th, 1981 at the hour of 2:00 p.m. to be the time for hearing on the motion (Record p. 25). On August 18, 1981 at the hour of 2:00 p.m., the Third Judicial District Court of Salt Lake County, State of Utah, the Honorable G. Hal Taylor presiding, declined to hear the Motion to Set Aside Judgment (Record P. 33). The Motion to Set Aside Judgment was continued and heard on November 3, 1981 at the hour of 2:00 p.m. in the Third Judicial

District Court in and for Salt Lake County, State of Utah, the Honorable G. Hal Taylor presiding. (Record p. 75). On the same date a hearing was held on an Order to Show Cause of the Plaintiff/Respondent. The reporter's transcript of the proceedings on November 3, 1981 has been designated and filed as part of the Record on Appeal.

During the hearing on the Defendant's Motion to Set Aside Judgment, both sides presented arguments touching on the issue of excusable neglect as it relates to the entry of Default and Default Judgment in this case. After both sides submitted the matter, the trial judge made his ruling as follows:

Well, I've read your proposed answer and I don't think it states any defense. The Motion to Set Aside the default is denied.
(Transcript pp. 20-21)

The formal Order Denying Motion to Set Aside Default Judgment was made and entered on November 18, 1981 by Judge G. Hal Taylor (Record p. 87). The Court entered no specific findings with respect to its denial of Defendant/Appellant's motion. The Defendant/Appellant filed his Notice of Appeal on December 10, 1981. (Record p. 90).

POINT I

DEFENDANT/APPELLANT DEMONSTRATED AN UNCONTROVERTED SHOWING OF INADVERTENCE AND EXCUSABLE NEGLIGENCE.

In Rule 60(b)(1), Utah Rules of Civil Procedure, this Court has provided as follows:

On motion and upon such terms as are just, the Court may in the furtherance of justice relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons (1) mistake, inadvertence, surprise, or excusable neglect; . . . The motion shall be made within a reasonable time and for reasons (1), (2), (3), or (4), not more than three months after the judgment, order, or proceeding was entered or taken. . . .

It has been consistently held by this Court that the purpose for Rule 60(b)(1) is to relieve against harshness of enforcing a judgment resulting from procedural difficulties, wrongs of opposing parties, or misfortunes preventing presentation of a claim or a defense. Warren v. Dickson Ranch Co., et. al., 260 P.2d 741, 123 U. 416 (1953). This Court recited in the case of Board of Education of the Granite School District v. Cox, 384 P.2d 806, 14 U. 2d 385 (1963) that the Court "will generally grant relief in doubtful cases so that a party may have a hearing." Cox, supra at 807. The Court went on to say that, "It is an abuse of discretion to refuse to vacate a default judgment where there is reasonable justification for the defendants' failure to appear and answer." While the Court ruled against setting the default aside as to Mrs. Cox, nevertheless, the principles enunciated in Cox are those that must guide the court in the instant case. The Court in Cox did note with approval the setting aside of the default as to Mrs. Cox due to illness. Serious illness is the basis of excusable neglect in the present case. Cox, supra. at 807.

It is a generally established principle of this Court that granting of relief from default judgments is favored "where there is any reasonable excuse, unless it will result in substantial prejudice or injustice to the adverse party." Westinghouse Electric Supply Co. v. Paul W. Larsen Contractors, Inc., 544 P.2d 876, 879 (1975). Emphasis added. Heathman v. Fabian & Clendenin, 377 P.2d 189, 14 U.2d 60 (1962); Utah Commerical & Savings Bank v. Trumbo, 53 P.1033, 17 U. 198 (1898).

In this case, the Defendant/Appellant clearly demonstrated through his affidavit to the district court that his reason for not timely answering the complaint of the Plaintiff/Respondent was his sudden illness and subsequent hospitalization. Non-disabling illness, on its face, may not be sufficient to justify a finding of abuse of discretion on the part of the trial court. However, illness of the disabling and incapacitating nature and severity as is present here, requiring hospitalization for approximately a week certainly constitutes a reasonable excuse for failure to appear and answer at least until a reasonable recovery sufficient to so enable a party. See Appendicies A and B.

It is noteworthy that the trial court made no specific finding as to excusable neglect. The trial court, however, was quite specific in its ruling denying the motion solely on the ground of failing to state a defense. (Transcript pp. 20-21). Indeed, it is therefore implicit in the trial court's ruling that excusable

neglect was shown, in that the Court's denial for Defendant/Appellant's Motion was based on the issue of whether a meritorious defense was stated. The Trial Court would have had no reason to address the issue of a meritorious defense unless it believed excusable neglect had already been established. As stated in Cox, supra. at page 808:

This latter question [that of a meritorious defense] arises only after consideration of the first question [that of excusable neglect] and a sufficient excuse therefrom being shown.

No contradiction whatsoever is contained in the record as to the Defendant/Appellant's statement of fact concerning his serious illness, his hospitalization, and his subsequent recovery. Indeed, there could be none.

In order to reverse the lower court's denial of a motion to set aside default, this Court must find an abuse of discretion. Interstate Excavating, Inc. v. AGLA Development Corp., 611 P.2d 369 (1980); Olsen v. Cummings, 565 P.2d 1123 (1977). The parameters of the lower court's discretion are defined and have long been established. In the early case of Cutler v. Haycock, 90 P. 897, 32 U. 354 (1907) this court set forth those guidelines as follows:

"It is equally elementary that this discretion is to be applied to the facts as they appear in each case, and, in the exercise of this discretion, the aim and object should be the promotion and furtherance of justice and the protection of the rights of all concerned. As has

been well said in all doubtful cases the general rule of courts is to incline towards granting relief from the default, and to bring about a judgment on the merits." Cutler at p. 900, Emphasis added. See also Hurd v. Ford, 276 P. 908 at 912, 74 U. 46 (1928).

"Law and Courts alike abhor a result that condemns a party unheard, and, unless the law unavoidably requires and justice demands it, where a party has not by his own inexcusable neglect deprived himself of the right, the courts should, and will, where equity permits, afford relief, to the end that a party may be given a hearing." Cutler at p. 901, Emphasis added.

This Court has consistently held that the policy of the law is to accord litigants the opportunity for a hearing on the merits where that can be done without serious injustice to the other party. Further where there is doubt about whether a default judgment should be set aside, that doubt should be resolved in favor of doing so. In particular, Olsen, supra at p. 1124 reaffirmed the established rule that "It is uniformly regarded as an abuse of discretion to refuse to vacate a default judgment where there is reasonable justification or excuse for the defendant's failure to appear, and timely application is made to set it aside." Citing Mayhew, infra.

A leading Utah case on the issue of excusable neglect is the case of Mayhew v. Standard Gilsonite Co., 376 P.2d 951, 14 U.2d 52 (1962) wherein the Utah Supreme Court set forth the guiding principals as follows:

It is undoubtedly correct that the trial court is endowed with considerable latitude of discretion in granting or denying such motions. [Motions to set aside default judgments] However, it is also true that the court cannot act arbitrarily in that regard, but should be generally indulgent toward permitting full inquiry and knowledge of disputes so they can be settled advisably and in conformity with law and justice. To clamp a judgment rigidly and irrevocably on a party without a hearing is obviously a harsh and oppressive thing. It is fundamental in our system of justice that each party to a controversy should be afforded an opportunity to present his side of the case. For that reason it is quite uniformly regarded as an abuse of discretion to refuse to vacate a default judgment where there is reasonable justification or excuse for the defendant's failure to appear, and timely application is made to set it aside. Mayhew at p. 952. Emphasis added.

The record firmly establishes justification of the conduct of Defendant/Appellant that clearly constitutes excusable neglect.

POINT II

DEFENDANT/APPELLANT HAS TENDERED A MERITORIOUS DEFENSE AND THE DEFAULT JUDGMENT MUST BE SET ASIDE TO PREVENT CLEAR AND MANIFEST INJUSTICE

This Court has stated, notwithstanding the rule of liberality in granting motions to set aside judgment in appropriate circumstances, as for example when excusable neglect is shown, the moving party should tender a defense of sufficient merit to justify the procedure. Mason v. Mason, 597 P.2d 1322 (1979); Downey State Bank v. Major-Blakeney Corp., et al, 545 P.2d 507 (1976); and Atkinson v. Atkinson, 134 P. 595, 43 U. 53 (1913).

. . . [W]e are in accord generally with the doctrine urged by defendant that the courts should be liberal in granting relief against judgments taken by default to the end that controversies may be tried on the merits. The other side of this coin is that the rights of the party moved against must also be safeguarded and that the courts should not be occupied with the trial of cases unless some useful purpose is to be served thereby. Therefore, notwithstanding the rule of liberality in granting motions to set aside judgments in appropriate circumstances, that should not be done unless the moving party tenders a defense of sufficient merit to justify that procedure. Mason at p. 1323. Emphasis added.

The issue of a meritorious defense arises only after a finding of excusable neglect by the lower court. Cox, supra at 808. While no specific finding is to be found in the record of the trial court nonetheless, excusable neglect can be inferred from the lower court's ruling which was based solely on the issue of whether a meritorious defense was shown. The lower court concluded that no defense was stated. This ruling by the Court is manifest error. The tender of a meritorious defense does not mean the proof thereof. It is only required that a good defense on its face be alleged. Cutler, supra at p. 899.

Defendant/Appellant tendered to the lower court his proposed answer simultaneous with filing his Motion to Set Aside Default and Default Judgment, which tendered answer may be found in the trial court record at pages 29-31. The answer proffered by Defendant/Appellant alleges the following defenses.

1. Pursuant to Section 55-15d-8, Utah Code Annotated, 1953, as amended, which provides for recovery of medical assistance payments made by the State, any recovery to which the Plaintiff/Respondent may be entitled is reduced by 25 percent. Plaintiff/Respondent's default judgment was for the full amount of medical assistance payments without the required statutory reduction.

2. The Plaintiff/Respondent failed to comply with the provisions of Section 55-15d-10, and is thus not entitled to any recovery at all. The State failed to file a verified lien statement with the Court in which Linda Coram's medical malpractice action was filed, thus, the State failed to perfect its asserted lien. See Appendix C.

3. The Plaintiff/Respondent failed to comply with other statutory requirements of Title 55, Utah Code Annotated 1953, as amended, and the Plaintiff/Respondent therefore has no right of recovery.

4. The Plaintiff/Respondent based its right of recovery upon Chapter 55-15d of the Utah Code Annotated 1953, as amended, which Chapter had been previously repealed by the 1981 legislature. The effective date of repeal was May 12, 1981, and this date preceded the filing of Plaintiff/Respondent's complaint. The Plaintiff/Respondent will undoubtedly assert that the recovery provisions of

Chapter 55-15d were re-enacted elsewhere in the Utah Code. While this is so, it does not obviate the absolute fact that the complaint on its face failed to state a claim for relief. This Court has implicitly held that where a complaint, on its face, fails to state a claim for relief, a default judgment cannot be permitted to stand. Sovereign v. Meadows, 595 P.2d 852, 854 (1979).

5. The Plaintiff/Respondent has no right of recovery under Title 55, Utah Code Annotated 1953, as amended, inasmuch as Chapter 55-15d providing for recovery of medical assistance payments was not enacted into law until 1979, which was subsequent to the payment of benefits for and on behalf of Linda Coram, said payments having been made in 1978 and earlier.

6. The Plaintiff/Respondent's recovery, if any, is limited by virtue of the fact that the defendant Linda Coram has not been made whole in spite of the settlement of her lawsuit. Equitable considerations mandate that the Plaintiff/Respondent reduce its alleged claim pursuant to the equitable provisions of Section 55-15d-6 which provides for the reduction of any recovery to prevent "undue hardship upon the person who suffered the injury" for which medical assistance payments were made.

All of the foregoing are real and meritorious defenses and each involves a factual determination as well as application of appropriate law. Each fits the judicial definition of a "meritorious defense" supplied in the case of Beren Corp. v. Spader, 255 N.W.2d 247, 198 Neb. 677, in which a "meritorious defense" was held to be one that is worthy of judicial inquiry because it raises a question of law deserving some investigation and discussion or because a real controversy as to the essential facts exists.

The ruling in the lower court that no defense was stated is clearly without merit and is an obvious abuse of discretion mandating an appeal to the equitable conscience of this Court and requiring a reversal of the order denying the Defendant/Appellant's Motion to Set Aside Default and Default Judgment.

The Plaintiff/Respondent has never attempted service on the Defendant Linda Ann Coram and therefore has never litigated its claims against her. All of the issues and defenses contained in the tendered answer by Defendant/Appellant are also the defenses and claims of the Defendant Linda Ann Coram which are yet to be litigated between her and the Plaintiff/Respondent. The unserved defendant Linda Coram asserts that the subject funds claimed by the State are hers. Should Linda Coram prevail, she would be entitled to the funds.

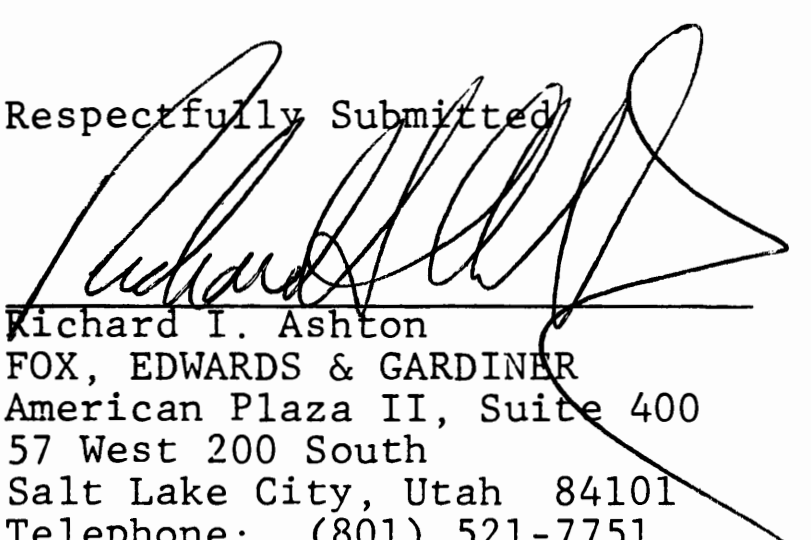
Such a result would place Defendant/Appellant in the unjust position of owing a judgment to Plaintiff/Respondent for funds to which Plaintiff/Respondent was never entitled.

Without question, a controversy containing claims as substantial as those of Plaintiff/Respondent matched against the defenses as real and substantial as those of Defendant/Appellant must be litigated and can only be resolved on the merits. In this case, to permit the Plaintiff/Respondent's default judgment to stand, reduces justice to a footrace and determines important substantive rights through procedural technicality as never intended by the Utah Rules of Civil Procedure. To deny Defendant/Appellant his day in court is a rejection of the standard of essential fairness upon which our entire system of law is based.

CONCLUSION

Defendant/Appellant respectfully submits that the record in this case clearly establishes an abuse of discretion by the lower court in refusing to grant the Motion to Set Aside Default and Default Judgment in that excusable neglect was clearly shown and a meritorious defense was tendered. Defendant/Appellant submits that his appeal is well-taken and the judgment of the lower court must be reversed to prevent clear and manifest injustice.

Respectfully Submitted

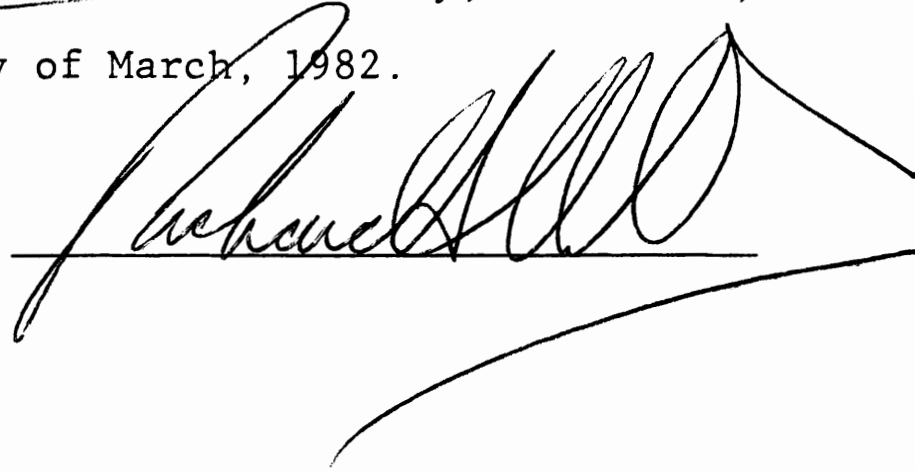


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MAILING CERTIFICATE

This is to certify that a true and correct copy of the foregoing Brief of Appellant was mailed to Leon A. Halgren, 150 West North Temple, Suite 234, Salt Lake City, UT 84103, postage prepaid, this 5th day of March, 1982.

A handwritten signature in black ink, appearing to read "Richard H. Allen", is written over a horizontal line. A long, sweeping horizontal line extends from the end of the signature across the bottom right of the page.

APPENDIX A

UTAH VALLEY HOSPITAL RECORD

D. JOHN MUSSELMAN

NAME MUSSELMAN, JOHN D.		SEX M	AGE 34	SMOKE YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	TYPE HOSP. SERVICE MED 5A	PATIENT NUMBER 113971-6	
ADDRESS 15 WEST 1050 NORTH		MARITAL STATUS MARRIED	BIRTH DATE 9-3-46		BIRTHPLACE ILLINOIS		
STATE UTAH		ZIP CODE 84601	PHONE 375-9499		DATE LAST ADMITTED TO UTAH VALLEY HOSP. SAME		
PHYSICIAN DR. BRYAN TERRY		NAME OF HOSPITAL LAST ADMITTED TO DO NOT CALL				DATE 7/4/81	
ADMITTING DATE 30-81	HOUR 8:15 PM	RELIGION LDS	WARD OR PARISH DO NOT CALL				DISCHARGE DATE 7/4/81
EMPLOYER LIE MUSSELMAN		EMPLOYER'S ADDRESS UTC				INSURANCE YES	
EMPLOYEE TORNEY		EMPLOYER'S ADDRESS SELF				INSURANCE YES	
OR RESPONSIBLE PARTY LIE MUSSELMAN		RELATIONSHIP WIFE	ADDRESS 1475 W 1050 N PROVO, UTAH				PHONE 375-9499
OTHER (MARRIED NAME) RIAN MUSSELMAN		ADDRESS PROVO, UTAH				PHONE	
IN CASE OF EMERGENCY HN MUSSELMAN		RELATIONSHIP FATHER	ADDRESS SAME				PHONE 375-5051
INDUSTRIAL HN MUSSELMAN		AUTO ACCIDENT OTHER				DATE OF ACCIDENT	
INSURANCE IA		SECOND INSURANCE NONE					
ADDRESS		ADDRESS					
NO 2041622	INDIVIDUAL 528 78 5075	POLICY NUMBERS DIST 128	GROUP NO	INDIVIDUAL 4 da	POLICY NUMBERS		
WITH AH TECHNICAL COLLEGE	PHONE OREM, UTAH		GROUP WITH	med	PHONE		
ADDRESS OREM, UTAH			ADDRESS cons - H. Anderson				
HOLDER LIE MUSSELMAN			POLICYHOLDER Admitting Clerk				
ADMITTING CLERK LIE MUSSELMAN			NJ				

DIAGNOSIS AND SUMMARY RECORD

DIAGNOSIS:
1. abd pain + diarrhea - prob viral gastroenteritis
2. Rectal Bleeding 2° to hemorrhoids
3. ↑ indirect Bilirubin - probable Gilbert's Syndrome

TESTS:
Q

TESTS:
ED CAL Q

TEST PARTUM

TEST OPERATIVE

LAB: **dist 7/8/81**

CODE NO.

15-25-63
259.0
558.9
008.8
569.3
455.6
277.4

RECOVERED ☐ IMPROVED ☐ NOT IMPROVED ☐ NOT TREATED ☐ EXPIRED ☐

RELEASED AGAINST ADVICE ☐ AUTOPSY ☐

I HAVE EXAMINED AND APPROVED THIS COMPLETE MEDICAL RECORD

SIGNED

ATTENDING PHYSICIAN

M D

Kirk Anderson, M.D.

CC: Dr. Bryan G. Terry

MUSSELMAN, JOHN D.

Admitted 6-30-81

Discharged 7-4-81

The patient is a 34 year old white male admitted for abdominal pain, diarrhea and bloody stools. Previously in good state of health, has no history of peptic disease in the past. Has not been having abdominal complaints until two days prior to admission he had fairly sudden onset of epigastric abdominal pain followed by watery diarrhea. The pain persisted through the night into the next day. The diarrhea became blood tinged. At that time he presented himself to the emergency room where he was admitted by Dr. Bryan Terry and I will refer you to Dr. Terry's note for details. I was consulted the following day for workup. The patient states that the pain has subsided somewhat in the epigastrium and has moved more to the right lower quadrant.

PAST MEDICAL HISTORY: Of no consequence. The patient has not been on medications. He is a non-smoker, is only a social drinker. Has not recently been drinking frequently or more heavily.

REVIEW OF SYSTEMS: Negative.

PHYSICAL EXAMINATION: Revealed a well tanned white male in no acute distress. His BP was 130/75 without orthostatic change. His heart rate was 80 and regular. The rest of his examination was normal except the abdomen which revealed some mild epigastric tenderness and some right lower quadrant abdominal tenderness without guarding or rebound. No masses were found. Rectal exam revealed an external hemorrhoid which extended up through the anal canal and is palpable up into the rectum. No masses are felt. There was some grossly bloody appearing fluid on the tip of the examination glove.

ADMITTING LABORATORY: Was significant in that hematocrit was 52 on admission, and on the day I saw the patient had fallen to 49 after rehydration.

HOSPITAL COURSE: The patient's hematocrit fell further to 43 and then was stable. Blood loss per bowel ceased the day after admission. Upright and flat plate of the abdomen revealed no free air in the abdomen. Upper GI series was negative. Sigmoidoscopy and barium enema was negative. Stool culture was negative. Stool for ova and parasite was negative. The diarrhea spontaneously resolved and at the time of discharge the patient was feeling well. It is presumed that the diarrhea likely represented a viral gastroenteritis and that the blood loss was on the basis of hemorrhoidal bleeding.

FINAL DISCHARGE DIAGNOSIS: 1. Abdominal pain and diarrhea, likely representing viral gastroenteritis.
2. Rectal bleeding representing most likely hemorrhoidal bleeding.
3. Elevated indirect bilirubin which resolved, likely representing Gilbert's Syndrome.

The patient was to follow up with me as needed in the future. He was discharged on no medications.

KA/gjr

Dict: 7-8-81

Trans: 7-8-81



HISTORY AND PHYSICAL

512

SSSELMAN, John
4 years old

mitted:

ISTORY:

This 34 year old Attorney was in good health until yesterday the evening of June 29, 1981 when he developed epigastric pain which became rather severe and constant. He also began to have watery diarrhea during the night. The patient's symptoms continued to last all during the night until early morning when he began to vomit. Several hours after vomiting he began to pass fairly bright blood per rectum. He has passes 5 or 6 bloody stools today and this evening June 30, 1981. His wife who is a Nurse brought him to the ER for evaluation.

The patient's pain is midepigastirc, constant and nonradiating and rather severe. There is no prior history of pain although he does admit to some upper abdominal distress on occasion. There is no PH of GI bleeding. There is no history of use of analgesics such as aspirin.

PH:

Medical- No medical illnesses. Surgery- The patient has had an appendectomy, tonsillectomy. Medications- The patient takes Chlor-Trimeton only. Allergies- Sulfa.

PE:

General, the patient is a tan, healthy appearing male in no distress at this time. He has just had an injection of Demerol.

HEAD:

Normocephalic.

EYES:

Pupils are small and constricted. EOM's are conjugate. Fundoscopic examination was not done.

NOSE & ORAL PHARYNX: Normal to examination. There is no sign of vascular malformation in the oral pharynx.

NECK:

Supple. No thyromegaly or lymph adenopathy.

CHEST:

Lungs clear to A&P.

HEART:

S1 and S2 are normal. Rhythm is regular. No murmurs. No gallops.

ABD:

Soft, with mild epigastric tenderness only. No bowel sounds heard. There is no guarding or marked tenderness anywhere else in the abdomen. External genitalia normal to examination.

RECTAL:

Examination reveals no stool present in the ampulla. No blood recovered.

EXTREM:

Normal to examination.

SKIN:

Normal.

IMP:

GI bleed, etiology undetermined.

PLAN:

The patient - Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services Library Services and Technology Act administered by the Utah State Library. Machine-generated OCR, may contain errors. Admitted to the hospital this evening for

MEDICAL CONSULTATION

MUSSELMAN, JOHN D.

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PHYSICAL EXAMINATION:

ABDOMEN: The abdomen is not distended. Bowel sounds are present. The epigastrium is mildly tender to palpation without masses or rebound or guarding. There is fairly remarkable right lower quadrant abdominal pain, but this is without guarding or rebound.

GENITALIA: Unremarkable.

RECTAL: Reveals an external hemorrhoid, which extends up through the anal canal and is palpable up into the rectum. No masses are felt. There is no tenderness. There is a grossly bloody fluid on the tip of the examination glove, however.

EXTREMITIES: Normal.

NEUROLOGICAL: Normal.

LABORATORY DATA:

To date, the HCT is 52 on admission, and has recently fallen to 49. The white blood cell count is elevated with a slight left shift. Other lab data are not present at the time of dictation.

IMPRESSION:

1. Abdominal pain, diarrhea, and bloody stools. The differential diagnosis in this instance includes bleeding peptic ulcer disease, lower GI bleeding with the character of the stools, it is possible that the diarrhea is nonbloody, but the patient has had diarrhea that has caused hemorrhoidal bleeding, possibility of infectious diarrhea with his abdominal complaints and elevated white blood cell count. The remote possibilities of pancreatitis. With the change in pain from epigastrium to right lower quadrant, one wonders about the possibility of perforated peptic ulcer disease.
2. Elevated bilirubin and slightly elevated alkaline phosphatase, undetermined etiology. May represent hepatitis in an early stage, Gilbert's disease, stone disease, other obstructive disease. No evidence that this is prehepatic in origin.
3. Hemorrhoids. It may be that the intestinal blood loss is a hemorrhoidal source, although one can not say this with confidence and the patient needs GI studies to rule out other bleeding sources.

PLAN:

1. GI work up will be obtained. Initially we will start with a flat plate upright of the abdomen and if there is no free air noted, then we will proceed with an upper GI x-ray. If the upper GI is normal, we will need to do a barium enema and proctoscopic examination.
2. Will follow his vital signs and blood count in order to assess the amount of blood loss.
3. Work up the elevated bilirubin with fractionation and tests to rule out liver disease. It is noted that the patient has no jaundice.

MEDICAL CONSULTATION

MUSSELMAN, JOHN D.


PAGE 3

PLAN:

3. represents Gillbaires disease, but must rule out other etiologies.

Thank you for inviting this consultation. I will see if the studies are taken care of and will follow up each day.

KRA/ko
7-1-81--dictated & typed



KIRK R. ANDERSON, M.D.

UTAH VAL 1034 NORTH 500 WEST PROVO, EMERGENCY

15 25 63 HOSP 76 EC 77 X-R 78

22C 129 Phys Hooker

BLUE CROSS 4575

PATIENT NAME (LAST, FIRST, MIDDLE) AGE BIRTH DATE SEX MAR STAT ADM DATE ADM TIME

Musselman John D 34 3 Sept 46 M marr 30 Jun 81 1630

PATIENT ADDRESS CITY, STATE, ZIP CODE HOME PHONE WORK PHONE ALLERGIES

1475 W 1050 N Provo Utah 84601 375 9499 sulpha

COMPLAINT-IF ACCIDENT STATE DATE AND TIME HOME ON JOB AUTO OTHER BROUGHT IN BY MANNER RECEIVED

abdominal pain rectal bleeding 30 Jun 81 0400 wife walked

SPOUSE NAME FATHER'S NAME MOTHER'S NAME PARENT'S ADDRESS PHONE DATE LAST ADM TO UWH UNDER WHAT NAME

Julie

GUARANTOR'S FULL NAME ADDRESS PHONE SOC SEC NO

wife Julie Musselman

GUARANTOR'S EMPLOYER EMPLOYER'S ADDRESS PHONE MEDICARE NO

UTC Provo

ND /LIAB CARRIER NAME ADDRESS PHONE WELFARE NO

BLUE CROSS-BLUESHIELD ID # GR# COMMERCIAL INSURANCE NAME ADDRESS POLICY NO

EMIA 528 78 5075 2041622

OTHER INSURANCE ADDRESS

COMPANY none

FINAL DIAGNOSIS DIS ADM ROOM DEC PHYSICIAN'S SIGNATURE

1720 Penicillin 250 IU Carlson

1720 Phenergan 250 IU Carlson

1746 Tagamet 300 IU Carlson

1800 Demerol 25mg IV P. Terry

PHYSICIAN'S REPORT

HISTORY: BRR per rectum Gen ABD p

PHYSICAL:

X-RAY:

LAB: CBC SMA 6-12 TXM GU

CONDITION ON DISCHARGE IMPROVED NOT IMPROVED ADM RM NOT TREATED EXPIRED DISCHARGE INSTRUCTIONS GIVEN ON AFTERCARE FORM FOLLOW UP REFER TO

DIAGNOSIS: CODE

NOTICE AND AUTHORIZATION FOR TREATMENT AND PAYMENT: I hereby authorize any medical, surgical and anesthetic procedure which the physician may consider necessary for the above named patient. I also assume financial responsibility to the physician/hospital. Accounts not paid in 30 days will be charged a monthly FINANCE CHARGE OF 1.5% (min charge 50c) which is an ANNUAL PERCENTAGE RATE OF 18%. In the event of default I agree to pay costs and a reasonable attorney fee in any account balance after default is placed with an attorney for collection. This account to be paid in Provo, Utah.

AUTHORIZATION FOR NARCOTIC MEDICATIONS: If deemed medically advisable, I hereby consent to the attending physician or his associate to prescribe administer or dispense a narcotic drug to a minor child.

AUTHORIZATION TO PAY INSURANCE BENEFITS: I hereby authorize the above named physician, hospital or treatment to my insurance company. I also hereby authorize payment directly to the above named physician, hospital or treatment.

PHYSICIAN'S SIGNATURE

APPENDIX B

AFFIDAVIT OF KIRK R. ANDERSON, M.D.

AFFIDAVIT OF DR. KIRK R. ANDERSON

STATE OF UTAH)
 : ss.
COUNTY OF UTAH)

Dr. Kirk R. Anderson having been first duly sworn
deposes and states that:

1. I am a medical doctor licensed to practice
medicine within the State of Utah.

2. During June, July, and August of 1981, I was a
treating physician of Mr. D. John Musselman.

3. Mr. Musselman was admitted to the Utah Valley
Hospital as an inpatient on or about June 29, 1981 with a
possible stomach ulcer.

4. His admission to the hospital was through the
emergency room; Mr. Musselman was in a very great deal of
pain, and upon his admission he was immediately started on
certain pain medications, administered I-V as well as I-M.

5. One of the pain medications administered to
Mr. Musselman periodically during his stay in the hospital
was that of demerol which is considered to be a more potent
type of pain medication and which would have made it
extremely difficult for Mr. Musselman to have remained aware
of his personal or business demands.

6. Also while in the hospital, Mr. Musselman
underwent a rigorous series of tests and examinations,

including an upper GI series, a lower GI series, and a sigmoidoscopy.

7. On July 4, 1981, Mr. Musselman was released from the Utah Valley Hospital under my direction to further recuperate at home.

8. It is my professional opinion that Mr. Musselman's illness and recuperation would have prevented him from returning to his normal daily activities for at least an additional two weeks following his release from the hospital.


9. Mr. Musselman remained under my care and treatment following his release from the hospital and was not completely released by me until a follow up visit and examination on ~~August~~ JULY 16, 1981.

FURTHER affiant sayeth not.

DATED this 4th day of March, 1982


KIRK R. ANDERSON, M.D.

SUBSCRIBED AND SWORN to before me this 4th day of March, 1982.


NOTARY PUBLIC

Residing In Salt Lake City, U

My Commission Expires:
4.2.84

APPENDIX C

AFFIDAVIT OF PAUL C. BADGER
CLERK OF THE UNITED STATES
DISTRICT COURT

1982

C-78-0405W

Paul L. Badger
Paul L. Badger, Clerk

BY Paul L. [Signature] DEPUTY